IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

WP(C).No. 12441 of 2005(F)

PETITIONERS:
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1. K.T.ITTYAVIRAH, S/O.THOMAS,
KALLOOR HOUSE, KANJIRAPPILLY VILLAGE & TALUK,
KOTTAYAM DISTRICT.

2. CHACKO THOMAS, S/O.THOMAS,
KALLOOR HOUSE, CHIRAKKADAVU VILLAGE,
KANJIRAPPILLY TALUK, KOTTAYAM DISTRICT.

BY ADV. SRI.C.M.TOMY
SRI.MATHEW SKARIA

RESPONDENTS:
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1. THE DY. TAHSILDAR-REVENUE RECOVERY,
KANJIRAPPILLY.

2. THE ASSISTANT COMMISSIONER (ASSESSMENT),
SPECIAL CIRCLE, KOTTAYAM.

3. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
DEPARTMENT OF COMMERCIAL TAXES,
SECRETARIAT, THIRUVANANTHAPURAM.

4. M/S.FAZIL TRADING CO.RUBBER DEALER,
KANJIRAPPILLY, REPRESENTED BY ITS
MANAGING PARTNER, K.K.SHIHAO,
S/O.V.M.KASSIM, KALLOLIL HOUSE, PALAMPRA P.O.,
PATTIMATTOM, KANJIRAPPILLY.

BY GOVERNMENT PLEADER SRI.JULIAN XAVIER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.12441/2005

APPENDIX

PETITIONERS EXHIBITS

EXT.P1: PHOTOCOPY OF THE DEMAND NOTICE NO.B2-11/2005-ST DATED 15.4.05 UNDER SECTION 7 OF THE REVENUE RECOVERY ACT ISSUED BY THE 1ST RESPONDENT TO THE PETITIONERS DEMANDING RS.6.08,27,431/- TOWARDS SALES TAX AND PENAL INTEREST FOR THE YEARS 2001-02 AND 2002-03.

EXT.P2: PHOTOCOPY OF THE DEMAND NOTICE NO.B2-11/2005-ST DATED 06.4.05 UNDER SECTION 7 OF THE REVENUE RECOVERY ACT ISSUED BY THE 1ST RESPONDENT TO THE PETITIONERS DEMANDING AN AMOUNT OF RS.3,33,73,830/- TOWARDS PENALTY AND PENAL INTEREST FOR THE YEARS 2001-02, 2002-03 AND 2003-04.

EXT.P3: PHOTOCOPY OF THE DEMAND NOTICE NO.B2-11/2005-ST DATED 06.4.05 UNDER SECTION 34 OF THE REVENUE RECOVERY ACT ISSUED BY THE 1ST RESPONDENT TO THE PETITIONERS DEMANDING AN AMOUNT OF RS.6,08,27,431/- TOWARDS SALES TAX AND PENAL INTEREST FOR THE YEARS 2001-02 AND 2002-03.

EXT.P4: PHOTOCOPY OF THE DEMAND NOTICE NO.B2-11/2005-ST DATED 15.4.05 UNDER SECTION 34 OF THE REVENUE RECOVERY ACT ISSUED BY THE 1ST RESPONDENT TO THE PETITIONERS DEMANDING AN AMOUNT OF RS.3,33,73,830/- TOWARDS SALES TAX AND PENAL INTEREST FOR THE YEARS 2001-02, 2002-03 AND 2003-04.

EXT.P5: PHOTOCOPY OF A MODEL FORM OF SECURITY BOND UNDER RULE 6(2)(e) OF SALES TAX RULES.

EXT.P6: PHOTOCOPY OF THE NOTICE BEARING NO.B2-11/05-ST/B2-12/05-ST DATED 31/8/2006 ISSUED BY THE TAHSILDAR KANJIRAPPALLY TO THE 1ST PETITIONER.

EXT.P7: PHOTOCOPY OF THE NOTICE BEARING NO.B2-11/05-ST/B2-12/05-ST DATED 31/8/2006 ISSUED BY THE TAHSILDAR, KANJIRAPPALLY TO THE 2ND PETITIONER.

EXT.P8: PHOTOCOPY OF THE RECEIPT NO.3338556 DATED 6.10.2006 ISSUED FROM THE VILLAGE OFFICE,KANJIRAPPALLY TO THE 1ST PETITIONER.

EXT.P9: PHOTOCOPY OF THE RECEIPT NO.3338571 DATED 6.10.2006 ISSUED FROM THE VILLAGE OFFICE,KANJIRAPPALLY TO THE 1ST PETITIONER.

EXT.P10: PHOTOCOPY OF DEMAND DRAFT NO.388665 DATED 9.10.2006 DRAWN ON SBT KOTTAYAM IN FAVOUR OF THE 2ND RESPONDENT.

P.T.O.

EXT.P11: PHOTOCOPY OF DEMAND DRAFT NO.388666 DATED 9.10.2006 DRAWN ON SBT KOTTAYAM IN FAVOUR OF THE 2ND RESPONDENT.

EXT.P12: PHOTOCOPY OF THE D.D.NO.388775 DATED 8.11.2006 OF SBT FOR RS.1,00,000/- OFFERED BY THE PETITIONERS TO THE 2ND RESPONDENT.

EXT.P13: PHOTOCOPY OF THE COVERING LETTER DATED 9.11.2006 GIVEN TOT HE 2ND RESPONDENT BY THE 1ST PETITIONER.

EXT.P14: PHOTOCOPY OF THE REPLY GIVEN BY THE 2ND RESPONDENT TO THE 1ST PETITIONER.

<u>EXHIBITS OF R2</u>

EXT.R2(a): TRUE COPY OF THE SECURITY BOND.

//TRUE COPY//

P.A. TO JUDGE

P.R.RAMAN, J.

W.P.(C) NO. 12441 OF 2005

Dated this the 19th day of January, 2007

J U D G M E N T

Petitioners were sureties towards sales tax dues from the 4th respondent. They have executed a joint bond as evidenced by Exhibit R2(a) for an amount of Rs.15,00,000/-. The 4th respondent committed default in payment of the sales tax dues. Hence proceedings were initiated against the petitioners for the realisation of the entire amount of sales tax arrears due from the 4th respondent. Challenging the proceedings, petitioners has approached this court as movable properties were under attachment. During the pendency of this writ petition, petitioners has paid an amount of Rs.10,000/-. Based on the bond executed, the maximum liability of the petitioners together can only be Rs.15,00,000/-, less what has been paid, balance will be Rs.14,90,000/-. The petitioners are prepared to pay the same in instalments. A counter affidavit is filed in the matter. There is no dispute that the bond amount is only for an amount of Rs.15,00,000/-. Therefore the petitioners are well founded in their contention that no amount in excess of Rs. 15,00,000/- could be

recovered from them. Hence the proceedings initiated for amounts in excess of the amount of Rs.15,00,000/- is clearly illegal.

2. The revenue recovery proceedings as against the petitioners is quashed. The petitioners shall pay the balance Rs.14,90,000/- in ten equal monthly instalments commencing from 15/2/2007 and thereafter on 15th of subsequent months. In case of default, it will be open to the authorities to proceed to recover the balance instalment amount in lump by issuing a fresh notice in that behalf. The movables shall be released on payment of the first instalment.

The petitioners shall produce a copy of this judgment before the respondents for compliance.

Writ petition is allowed to the above extent.

P.R.RAMAN, JUDGE

Rp